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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,793	03/07/2001	John Hathaway	940-3079-U	5476

7590 02/01/2006

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/800,793	<b>Applicant(s)</b> HATHAWAY ET AL.	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--


The Appeal Brief filed on 22 December 2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

The appeal brief filed December 22, 2004 has used the format set forth in 37 CFR 1.192(c). However, 37 CFR 1.192 was abolished on September 13, 2004, and replaced by 37 CFR 41.37(c). Accordingly, the appeal brief filed on December 22, 2004 does not comply with 37 CFR 41.37(c). See attached for further explanations.

  
**ROBIN A. HYLTON**  
**PRIMARY EXAMINER**



***Notice of Defective Appeal Brief***

The appeal brief filed December 22, 2004 has used the format set forth in 37 CFR 5 1.192(c). However, 37 CFR 1.192 was abolished on September 13, 2004, and replaced by 37 CFR 41.37(c). Accordingly, the appeal brief filed on December 22, 2004 2004 does not comply with 37 CFR 41.37(c).

A review of the application indicates that the following appropriate sections are missing from the amended appeal brief filed December 22, 2004:

- 1) "A summary of claimed subject matter" as set forth in 37 CFR 41.37(c)(1)(v);
- 2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR 41.37(c)(1)(vi);
- 3) "Evidence appendix" as set forth in 37 CFR 41.37(c)(1)(ix); and
- 4) "Related proceedings appendix" as set forth CFR 41.37(c)(1)(x).

A substitute appeal brief that is in compliance with CFR 41.37 is required. For more information on the Board's new rules see the web page entitled More Information on the Rules Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

The examiner's answer mailed March 24, 2005 and the reply brief filed August 9, 2005 are hereby vacated.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin A. Hylton whose telephone number is 571/272-4540. The examiner can normally be reached on Monday-Friday 9:00 am - 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571/272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
January 27, 2006



Robin A. Hylton  
Primary Examiner  
GAU 3727